

Regular Session, 2011

SENATE BILL NO. 59

BY SENATORS DONAHUE, ALARIO, APPEL, BROOME, CHABERT, CHEEK, CROWE, DORSEY, GUILLORY, HEITMEIER, JACKSON, LAFLEUR, LONG, MARTINY, MURRAY, NEVERS, PETERSON, QUINN, RISER, WALSWORTH AND WILLARD-LEWIS AND REPRESENTATIVES FOIL, HARDY, SCHRODER AND SIMON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

STUDENTS. Provides relative to the use of seclusion and physical restraint to address the behavior of students with exceptionalities.

1 AN ACT

2 To amend and reenact R.S. 17:7(5)(b) and to enact R.S. 17:416.21 and 3996(B)(28), relative

3 to student behavior; to provide with respect to the appropriate use of seclusion and

4 physical restraint in response to the behavior of students with exceptionalities; to

5 provide for definitions; to provide relative to rules, guidelines, and procedures; to

6 provide for reporting and documentation; to provide for parental notification; and to

7 provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 17:7(5)(b) is hereby amended and reenacted and R.S. 17:416.21 and

10 3996(B)(28) are hereby enacted to read as follows:

11 §7. Duties, functions, and responsibilities of board

12 In addition to the authorities granted by R.S. 17:6 and any powers, duties, and

13 responsibilities vested by any other applicable laws, the board shall:

14 * * *

15 (5)

16 * * *

17 (b) Prepare and adopt **rules and** guidelines for the appropriate use of

1 seclusion, physical restraint, and mechanical restraint of students with
2 exceptionalities as defined in R.S. 17:1942, in accordance with the Administrative
3 Procedure Act.

4 * * *

5 §416.21. Behavior of students with exceptionalities; use of seclusion and
6 physical restraint

7 A. As used in this Section:

8 (1) "Imminent risk of harm" means an immediate and impending threat
9 of a person causing substantial physical injury to self or others.

10 (2)(a) "Mechanical restraint" means the application of any device or
11 object used to limit a person's movement.

12 (b) Mechanical restraint does not include:

13 (i) A protective or stabilizing device used in strict accordance with the
14 manufacturer's instructions for proper use and which is used in compliance
15 with orders issued by an appropriately licensed health care provider.

16 (ii) Any device used by a duly licensed law enforcement officer in the
17 execution of his official duties.

18 (3)(a) "Physical restraint" means bodily force used to limit a person's
19 movement.

20 (b) Physical restraint does not include:

21 (i) Consensual, solicited, or unintentional contact.

22 (ii) Holding of a student, by a school employee, for less than five minutes
23 in any given hour or class period for the protection of the student or others.

24 (iii) Holding of a student, by one school employee, for the purpose of
25 calming or comforting the student, provided the student's freedom of movement
26 or normal access to his or her body is not restricted.

27 (iv) Minimal physical contact for the purpose of safely escorting a
28 student from one area to another.

29 (v) Minimal physical contact for the purpose of assisting the student in

1 completing a task or response.

2 (4) "Positive behavior interventions and support" means a systematic
3 approach to embed evidence-based practices and data-driven decision making
4 when addressing student behavior in order to improve school climate and
5 culture.

6 (5) "Seclusion" means a procedure that isolates and confines a student
7 in a separate room or area until he or she is no longer an immediate danger to
8 self or others.

9 (6) "Seclusion room" means a room or other confined area, used on an
10 individual basis, in which a student is removed from the regular classroom
11 setting for a limited time to allow the student the opportunity to regain control
12 in a private setting and from which the student is involuntarily prevented from
13 leaving.

14 (7) "School employee" means a teacher, paraprofessional,
15 administrator, support staff member, or a provider of related services.

16 (8) "Written guidelines and procedures" means the written guidelines
17 and procedures adopted by a school's governing authority regarding
18 appropriate responses to student behavior that may require immediate
19 intervention.

20 B. (1) Seclusion shall be used only:

21 (a) For behaviors that involve an imminent risk of harm.

22 (b) As a last resort when de-escalation attempts have failed and the
23 student continues to pose an imminent threat to self or others.

24 (2) Seclusion shall not be used to address behaviors such as general
25 noncompliance, self-stimulation, and academic refusal. Such behaviors shall be
26 responded to with less stringent and less restrictive techniques.

27 (3)(a) A seclusion room shall be used only as a last resort if and when
28 less restrictive measures, such as positive behavioral supports, constructive and
29 non-physical de-escalation, and restructuring of a student's environment, have

1 failed to stop a student's actions that pose an imminent risk of harm.

2 (b) A student shall be placed in a seclusion room only by a school
3 employee who uses accepted methods of escorting a student to a seclusion room,
4 placing a student in a seclusion room, and supervising a student while he or she
5 is in the seclusion room.

6 (c) Only one student may be placed in a seclusion room at any given
7 time, and the school employee supervising the student must be able to see and
8 hear the student the entire time the student is placed in the seclusion room.

9 (4) A seclusion room shall:

10 (a) Be free of any object that poses a danger to the student placed in the
11 room.

12 (b) Have an observation window and be of a size that is appropriate for
13 the student's size, behavior, and chronological and developmental age.

14 (c) Have a ceiling height and heating, cooling, ventilation, and lighting
15 systems comparable to operating classrooms in the school.

16 C. (1) Physical restraint shall be used only:

17 (a) When a student's behavior presents a threat of imminent risk of
18 harm to self or others and only as a last resort to protect the safety of self and
19 others.

20 (b) To the degree necessary to stop dangerous behavior.

21 (c) In a manner that causes no physical injury to the student, results in
22 the least possible discomfort, and does not interfere in any way with a student's
23 breathing or ability to communicate with others.

24 (2) No student shall be subjected to any form of mechanical restraint.

25 (3) No student shall be physically restrained in a manner that places
26 excessive pressure on the student's chest or back or that causes asphyxia.

27 (4) A school employee shall apply physical restraint only in a manner
28 that is directly proportionate to the circumstances and to the student's size, age,
29 and severity of behavior.

1 D. Seclusion and physical restraint shall not be used as a form of
2 discipline or punishment, as a threat to control, bully, or obtain behavioral
3 compliance, or for the convenience of school personnel.

4 E. No student shall be subjected to unreasonable, unsafe, or
5 unwarranted use of seclusion or physical restraint.

6 F. A student shall not be placed in seclusion or physically restrained if
7 he or she is known to have any medical or psychological condition that
8 precludes such action, as certified by a licensed health care provider in a written
9 statement provided to the school in which the student is enrolled.

10 G. A student who has been placed in seclusion or has been physically
11 restrained shall be monitored continuously. Such monitoring shall be
12 documented at least every fifteen minutes and adjustments made accordingly,
13 based upon observations of the student's behavior.

14 H. A student shall be removed from seclusion or released from physical
15 restraint as soon as the reasons for justifying such action have subsided.

16 I.(1) The parent or other legal guardian of a student who has been
17 placed in seclusion or physically restrained shall be notified as soon as possible.
18 The student's parent or other legal guardian shall also be notified in writing,
19 within twenty-four hours, of each incident of seclusion or physical restraint.
20 Such notice shall include the reason for such seclusion or physical restraint, the
21 procedures used, the length of time of the student's seclusion or physical
22 restraint, and the names and titles of any school employee involved.

23 (2) The director or supervisor of special education shall be notified any
24 time a student is placed in seclusion or is physically restrained.

25 J. A school employee who has placed a student in seclusion or who has
26 physically restrained a student shall document and report each incident in
27 accordance with the policies adopted by the school's governing authority. Such
28 report shall be submitted to the school principal not later than the school day
29 immediately following the day on which the student was placed in seclusion or

1 physically restrained and a copy shall be provided to the student's parent or
2 legal guardian.

3 K. If a student is involved in five incidents in a single school year
4 involving the use of physical restraint or seclusion, the student's Individualized
5 Education Plan team shall review and revise the student's behavior intervention
6 plan to include any appropriate and necessary behavioral supports.

7 L. The documentation compiled for a student who has been placed in
8 seclusion or has been physically restrained and whose challenging behavior
9 continues or escalates shall be reviewed at least once every three weeks.

10 M.(1) The governing authority of each public elementary and secondary
11 school shall adopt written guidelines and procedures regarding:

12 (a) Reporting requirements and follow-up procedures.

13 (b) Notification requirements for school officials and a student's parent
14 or other legal guardian.

15 (c) An explanation of the methods of physical restraint and the school
16 employee training requirements relative to the use of restraint.

17 (2) These guidelines and procedures shall be provided to all school
18 employees and every parent of a child with an exceptionality.

19 N.(1) The governing authority of each public elementary and secondary
20 school shall report all instances where seclusion or physical restraint is used to
21 address student behavior to the Department of Education.

22 (2) The Department of Education shall maintain a database of all
23 reported incidents of seclusion and physical restraint of students with
24 exceptionalities and shall disaggregate the data for analysis by school; student
25 age, race, ethnicity, and gender; student disability, where applicable; and any
26 involved school employees.

27 * * *

28 §3996. Charter schools; exemptions; requirements

29 * * *

1 B. Notwithstanding any state law, rule, or regulation to the contrary and
 2 except as may be otherwise specifically provided for in an approved charter, a
 3 charter school established and operated in accordance with the provisions of this
 4 Chapter and its approved charter and the school's officers and employees shall be
 5 exempt from all statutory mandates or other statutory requirements that are
 6 applicable to public schools and to public school officers and employees except for
 7 the following laws otherwise applicable to public schools with the same grades:

8 * * *

9 **(28) Seclusion and physical restraint of students with exceptionalities,**

10 **R.S. 17:416.21.**

11 Section 2. This Act shall become effective upon signature by the governor or, if not
 12 signed by the governor, upon expiration of the time for bills to become law without signature
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 15 effective on the day following such approval.

The original instrument was prepared by Jeanne Johnston. The following
 digest, which does not constitute a part of the legislative instrument, was
 prepared by Cathy Wells.

DIGEST

Donahue (SB 59)

Present law (R.S. 17:7(5)(b)) requires BESE to prepare and adopt guidelines for the appropriate use of seclusion, physical restraint, and mechanical restraint of students with exceptionalities.

Proposed law additionally requires BESE to prepare and adopt rules, in accordance with the Administrative Procedure Act, for the appropriate use of seclusion and restraint for such students.

Proposed law provides with respect to the use of seclusion and physical restraint in response to the behavior of students with exceptionalities as follows:

Defined terms:

1. "Imminent risk of harm" means an immediate and impending threat of a person causing substantial physical injury to self or others.
2. "Mechanical restraint" means the application of any device or object used to limit a person's movement. Further provides that "mechanical restraint" does not include:
 - (a) A protective or stabilizing device used in strict accordance with the

manufacturer's instructions for proper use and which is used in compliance with orders issued by an appropriately licensed health care provider.

- (b) Any device used by a duly licensed law enforcement officer in the execution of his official duties.
3. "Physical restraint" means bodily force used to limit a person's movement. Further provides that "physical restraint" does not include:
 - (a) Consensual, solicited, or unintentional contact.
 - (b) Holding a student by a school employee for less than five minutes in any given hour or class period for the protection of the student or others.
 - (c) Holding of a student, by one school employee, for the purpose of calming or comforting the student, provided the student's freedom of movement or normal access to his or her body is not restricted.
 - (d) Minimal physical contact for the purpose of safely escorting a student from one area to another.
 - (e) Minimal physical contact for the purpose of assisting the student in completing a task or response.
 4. "Positive behavior interventions and support" means a systematic approach to embed evidence-based practices and data-driven decision making when addressing student behavior in order to improve school climate and culture.
 5. "Seclusion" means a procedure that isolates and confines a student in a separate room or area until no longer an immediate danger to self or others.
 6. "Seclusion room" means a room or other confined area, used on an individual basis, in which a student is removed from the regular classroom setting for a limited time to allow the student the opportunity to regain control in a private setting and from which the student is involuntarily prevented from leaving.
 7. "School employee" means a teacher, paraprofessional, administrator, support staff member, or a provider of related services.
 8. "Written guidelines and procedures" means the written guidelines and procedures adopted by a school's governing authority regarding appropriate responses to student behavior that may require immediate intervention.

Restricts the use of seclusion to behaviors that involve an imminent risk of harm and as a last resort when de-escalation attempts have failed and the student continues to pose an imminent threat to self or others.

Prohibits the use of seclusion to address behaviors such as general noncompliance, self-stimulation, and academic refusal. Specifies that such behaviors be responded to with less stringent and less restrictive techniques.

With respect to the use of seclusion rooms:

1. A seclusion room may only be used as a last resort if and when less restrictive measures, such as positive behavioral supports, constructive and non-physical de-escalation, and restructuring of a student's environment, have failed to stop a student's actions that pose an imminent risk of harm.

2. A student may only be placed in a seclusion room by a school employee who uses accepted methods of escorting a student to a seclusion room, placing a student in a seclusion room, and supervising a student while he or she is in the seclusion room.
3. Only one student may be placed in a seclusion room at a time, and the school employee supervising the student must be able to see and hear the student the entire time the student is in the seclusion room.
4. A seclusion room shall:
 - (a) Be free of any object that poses a danger to the student placed in the room.
 - (b) Have an observation window and be of a size that is appropriate for the student's size, behavior, and chronological and developmental age.
 - (c) Have a ceiling height and heating, cooling, ventilation, and lighting systems comparable to operating classrooms in the school.

Specifies that physical restraint may only be used:

1. When a student's behavior presents a threat of imminent risk of harm to self or others and only as a last resort to protect the safety of self and others.
2. To the degree necessary to stop dangerous behavior.
3. In a manner that causes no physical injury to the student, results in the least possible discomfort, and does not interfere in any way with a student's breathing or ability to communicate with others.

Prohibits any student from being physically restrained in a manner that places excessive pressure on the student's chest or back or that causes asphyxia.

Provides that a school employee shall only apply physical restraint in a manner that is directly proportionate to the circumstances and to the student's size, age, and severity of behavior.

Prohibits the use of seclusion and physical restraint as a form of discipline or punishment, as a threat to control, bully, or obtain behavioral compliance, or for the convenience of school personnel.

Prohibits unreasonable, unsafe, or unwarranted use of seclusion or physical restraint.

Prohibits seclusion or physical restraint of a student known to have any medical or psychological condition that precludes such action, as certified by a licensed health care provider in a written statement provided to the school in which the student is enrolled.

Requires continuous monitoring of a student who has been placed in seclusion or has been physically restrained which is documented at least every fifteen minutes and adjustments made accordingly, based upon observations of the student's behavior.

Requires removal of a student from seclusion or released from physical restraint as soon as the reasons for justifying such action have subsided.

Requires that the parent or legal guardian of a student who has been placed in seclusion or physically restrained be notified as soon as possible. Further provides that such notification be made in writing within twenty-four hours of each incident of seclusion or physical restraint and include the reason for the seclusion or physical restraint, the procedures used, the length of time of the student's seclusion or physical restraint, and the names and titles of

any school employee involved.

Requires that the director or supervisor of special education must be notified any time a student is placed in seclusion or is physically restrained.

Requires a school employee who places a student in seclusion or who physically restrains a student to document and report each incident in accordance with the policies adopted by the school's governing authority. Such report must be submitted to the school principal not later than the school day immediately following the day on which the student was placed in seclusion or was physically restrained and a copy must be provided to the student's parent or legal guardian.

Provides that if a student is involved in five incidents in a single school year that involve the use of physical restraint or seclusion, the student's Individualized Education Plan team must review and revise the student's behavior intervention plan to include any appropriate and necessary behavioral supports.

Requires a review, at least once every three weeks, of the documentation compiled for a student who has been placed in seclusion or has been physically restrained and whose behavior continues or escalates.

Requires the governing authority of each public elementary and secondary school to:

1. Adopt written guidelines and procedures regarding:
 - (a) Reporting requirements and follow-up procedures.
 - (b) Notification requirements for school officials and the student's parent or other legal guardian.
 - (c) An explanation of the methods of physical restraint and the school employee training requirements relative to the use of restraint.
2. Provide such guidelines to all school employees and every parent of a child with an exceptionality.
3. Report all instances where seclusion or physical restraint is used to address student behavior to the Dept. of Education.

Requires the Dept. of Education to maintain a database of all reported incidents of seclusion and physical restraint of students with exceptionalities and to disaggregate the data for analysis by school; student age, race, ethnicity, and gender; student disability, where applicable; and any involved school employee.

Present law (R.S. 17:3996(B)) provides relative to the laws applicable to public schools from which charter schools are not exempt.

Proposed law adds proposed law to the list of statutory requirements that apply to charter schools.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 17:7(5)(b); adds R.S. 17:416.21 and 3996(B)(28))

Summary of Amendments Adopted by SenateCommittee Amendments Proposed by Senate Committee on Education to the original bill.

1. Limits applicability of the bill to students with exceptionalities and deletes provisions no longer needed to such limitation.
2. Removes school employee training requirements.
3. Removes requirement that a seclusion room remain unlocked.
4. Removes prohibition against a student being kept in seclusion or physically restrained for more than 15 minutes.
5. Requires modification in a student's behavior intervention plan when incidents involving seclusion or restraint reach specified threshold.
6. Removes requirement that the school principal assign one school employee to oversee the use of seclusion and physical restraint.
8. Requires that every parent of a child with an exceptionality receive a copy of the school's policy regarding the use of seclusion and restraint.

Senate Floor Amendments to engrossed bill.

1. Makes technical corrections.
2. Adds prohibition against a student being physically restrained in a manner that places excessive pressure on the student's chest or back or that causes asphyxia.